

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3595 of 1980

with

SPECIAL CIVIL APPLICATION No 2368 of 1984

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

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2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

CHIMANLAL CHANDRASHANKAR DAVE

Versus

STATE OF GUJARAT

Appearance:~

MR. S.R. BRAHMBHATT for Petitioner
M.G. DOSHIT & Co., for Respondent No. 1
Respondent No.2 served

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE A.R.DAVE

Date of decision: 24/03/98

The issues raised in these two petitions are so interconnected that they are to be disposed of by a common judgment. Accordingly, we are disposing of these two petitions by this common judgment.

2. Petitioner in Special Civil Application No.

3595/80 was appointed as Inspector of Steam Boilers and Smoke Nuisances as per Government Resolution dated 17.6.1964. The appointment was on probation for a period of 2 years with effect from the date he took charge of the post. By an order dated 9.2.1968, the petitioner was substantively appointed to the said post with effect from 2.7.1966. On becoming a full member in the cadre of Inspector of Steam Boilers and smoke Nuisances he continued in service. While so, by memorandum dated 16.9.1980, the Government in the Labour and Employment Department took the view that it was essential for the petitioner to pass post-training examination and he having not passed the same within the permissible chances, was liable to be relieved from service. This action of the Government was under challenge in Special Civil Application No. 3595 of 1980.

3. On the retirement of the then incumbent on the post of Chief Inspector of Steam Boilers, there was a move on the part of the Government to fill up that post by re-employing the retiring person. Questioning that move, Special Civil Application No. 2368 of 1984 was filed by petitioner in Special Civil Application No. 3595 of 1980 and another. The prayer made therein is to direct the Government to promote the petitioners to the post of Chief Inspector of Steam Boilers from the date on which they ought to be promoted.

4. By virtue of the interim order passed in Special Civil Application No. 3595 of 1980, the petitioner therein continued to discharge his duties as Inspector of Steam Boilers and Smoke Nuisances. When vacancy arose for the post of Chief Inspector of Steam Boilers, he was put in charge as Chief Inspector of Steam Boilers with effect from 29.2.1984. He held that post till he retired on superannuation on 31.12.1985.

5. In 1964 when the petitioner was selected for the post of Inspector of Steam Boilers and Smoke Nuisances, the post was governed by recruitment rules which is marked in this case as Annexure 'B'. After prescribing the qualifications, the rules stated, "a candidate

appointed by nomination will be on probation for 2 years and will be required to pass the Gujarati and/or Hindi examinations as may be prescribed by the Government." From this provision it is clear that no condition is imposed on a candidate to pass post-training examination for continuance in the post. Petitioner was appointed on the advice of the Public Service Commission by an order dated 17.6.1964. The appointment was on probation for a period of 2 years. That order specifically required the Commissioner of Labour to submit reports at the end of the first and second years of his service regarding general assessment of overall performance, character, initiative, etc. The order further required the Commissioner of Labour to indicate the nature of duties performed by the petitioner during the period, particulars of examinations, tests, training etc. which he is required to go through during the period of probation and in case the period of probation has been extended, the detailed reasons thereof. On the basis of the report submitted by the Commissioner of Labour, the Government, by Notification dated 9.2.1968, appointed the petitioner substantively in the post of Inspector of Steam Boilers and Smoke Nuisances with effect from 2.7.1966. Petitioner, thus, became a full member of the cadre of Inspector of Steam Boilers and Smoke Nuisances. On 16.9.1980, the Government ordered that the petitioner was liable to be relieved from service on account of his failure to pass the post-training examination.

6. Post-training examination was not prescribed in the statutory rule governing the qualification and method of appointment to the post of Inspector of Steam Boilers and Smoke Nuisances nor was a pass in such an examination a condition precedent for appointment to the gazetted post in government service. Pass in such an examination was introduced by statutory rules on 20.4.1970. According to the Government, pass in such an examination was introduced by Government Resolution dated 26.7.1962 and that resolution should apply to the petitioner. We are not in a position to agree with this contention. Statutory rule governing the qualification and method of appointment to the post held by the petitioner required a pass in Gujarati and/or Hindi examination prescribed by the Government. Petitioner passed that examination. No other examination was to be passed by him for becoming a full member of that cadre, on satisfactory completion of probation. This is more so when it is seen that the statutory rule governing the qualification and method of appointment to the post of Inspector of Steam Boilers and Smoke Nuisances incorporated the following clause with effect from 15.10.1972:-

"Selected candidate shall, during his probation period, have to undergo training and pass the post-training examination in accordance with the Gazetted Officers' (Pre-service Training and Examination) Rules, 1970 and he shall be required to furnish bonds in forms specified in Appendix B to these Rules."

Petitioner's appointment was in 1964 when there was no such provision in the statutory rules. It is trite law that government resolutions cannot alter the statutory rules. The statutory rules regarding qualification and method of appointment as it stood at the relevant time was silent about the training and pass as per the Gazetted Officers' (Pre-service Training and Examination) Rules, 1970. Viewed in this light, we are clear in our mind that the view taken by the Government that petitioner's services are liable to be terminated on account of his failure in passing the post-training examination is unsustainable.

7. The post of Chief Inspector of Steam Boilers fell vacant on the retirement of the then incumbent on 29.2.1984. With effect from that date the petitioner was allowed to hold charge of that post. He was not given regular promotion to that cadre because of the stand taken by the Government that he was not entitled to continue in the post of Inspector of Steam Boilers and Smoke Nuisances on account of his failure in passing the post-training examination. Since we have taken the view that it was not necessary for the petitioner to pass the post-training examination in accordance with the Gazetted Officers' (Pre-service Training and Examination) Rules, 1970, he should have been promoted to the post of Chief Inspector of Steam Boilers. The Government are directed to notionally promote the petitioner to the cadre of Chief Inspector of Steam Boilers and fix his emoluments as on 31.12.1985. On the basis of the salary so fixed, his retiral benefits are to be recomputed. We make it clear that the petitioner is not to be paid difference in the salary till 31.12.85 because he has not held the post on regular basis. Pensionary benefits on the basis of the salary in the cadre of Chief Inspector of Steam Boilers as on 31.12.1985, should be the basis for computing his retiral benefits. Such assessment should be made as expeditiously as possible, at any rate within 3 months from the date of receipt of a copy of this judgment. On fixing the pensionary benefits on the above basis, the entire arrears due to the petitioner, after giving credit to the amount already paid, must be

disbursed within 2 months therefrom.

8. Both the petitions are disposed of in the above terms. We make it clear that Special Civil Application No. 2368 of 1984 so far as it relates to the claim put forward by the second petitioner therein is concerned, is dismissed. Rule is made absolute to the above extent with no order as to costs.

24.3.98 (K. Sreedharan, C.J.) (A.R. Dave, J.)
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